

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-216593

DATE: October 15, 1984

MATTER OF: Cessna Aircraft Company

DIGEST:

1. A protest complaining about allegedly unduly restrictive specifications filed with GAO after the closing date for receipt of proposals is untimely under GAO Bid Protest Procedures.
2. Even if pre-closing date complaints to the contracting agency concerning allegedly unduly restrictive specifications could be considered as a protest, a subsequent protest to GAO filed more than 10 days after the agency received proposals on the closing date without relaxing the specifications is untimely under GAO Bid Protest Procedures.

Cessna Aircraft Company protests the award of a contract for purchase of an aircraft to Beech Aircraft Corporation under request for proposals No. 35-84, issued by the Forest Service. We dismiss the protest as untimely.

The solicitation was issued on June 11, 1984 and, as amended, specified August 9 as the closing date for receipt of proposals. Prior to the closing date, Cessna complained to the agency that a number of the specification provisions contained in the solicitation effectively excluded certain aircraft manufactured by four firms and requested that those specification provisions be relaxed. Following a pre-proposal conference, the agency issued a statement giving its reasons for including each of the allegedly restrictive provisions; it did not further amend the solicitation to relax them. The protester informed the agency prior to the closing date that it was not submitting an offer because it believed that the

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specifications reflected the agency's intent to conduct a sole-source procurement. Award was made to Beech Aircraft, the sole offeror, and Cessna filed a protest with this Office.

Cessna's protest to this Office, filed here on September 28, essentially complains about the agency's refusal to amend a solicitation that Cessna says unduly restricted competition. Our Bid Protest Procedures provide that protests based upon alleged solicitation improprieties must be filed, either with the contracting agency or this Office, prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1984). If a protest is filed initially with the agency, any subsequent protest to this Office must be filed within 10 days of when the protester receives actual or constructive notice of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a).

Obviously, the protest filed here complaining about the restrictiveness of the specifications is untimely under section 21.2(b)(1) of our procedures because it was not filed before the closing date for receipt of proposals. The protester does not contend that it filed a pre-closing date protest with the agency, but even if its complaints to the agency could be considered to have been a protest, its subsequent protest to this Office is nevertheless untimely under section 21.2(a) of our procedures. The very latest that initial adverse agency action could be said to have occurred is August 9, the date when proposals were received with no change in the allegedly restrictive specifications. See Central Air Service, Inc., B-213205, Feb. 6, 1984, 84-1 CPD ¶ 147. Cessna's protest here on September 28 was not filed within 10 days of August 9, and is therefore untimely.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel